UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JORDAN G. ROCKSTAD

Appeal 2008-2441
Application 11/200,443
Technology Center 3600

Decided: August 14, 2008

Before ERIC GRIMES, RICHARD M. LEBOVITZ, and MELANIE L. McCOLLUM, *Administrative Patent Judges*.

GRIMES, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an airbed. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

BACKGROUND

"[O]ne downside to the use of airbeds is that most conventional airbeds are only 4-10 inches tall. Thus, if an airbed is inflated and placed on the floor, a user must stoop significantly to get on the airbed, and getting off the airbed may also be difficult." (Specification 1-2).

The Specification discloses

> two twin size airbeds releasably attached along one upper edge, for example by a zipper (e.g., on the gusset). The two airbeds may additionally be releasably attached on the opposite edges of the airbeds by another connector, such as snaps. These releasable connections permit the two airbeds to be used at least three ways: stacked together as a twin double high bed, zippered together side by side as a king size bed, or separated into two twin beds

(*Id.* at 3).

DISCUSSION

1. CLAIMS

Claims 23-43 are pending and on appeal. Claims 23, 24 and 40 are representative and read as follows:

Claim 23: An airbed combination, comprising:

a first airbed comprising: a top planar surface; a bottom planar surface; a left side; a right side; a continuous sidewall extending between the top and bottom planar surfaces and substantially orthogonal to the top and bottom planar surfaces and joined to the respective planar surfaces to define at least one air chamber within the first airbed; and a top edge being defined at a juncture of the top planar surface and the continuous sidewall at the left side of the first airbed;

a second airbed, comprising: a first planar surface; a second planar surface; a left side; a right side; a continuous sidewall extending between the first and second planar surfaces and substantially orthogonal to the first and second planar surfaces and joined to the respective planar surfaces to define at least one air chamber within the second airbed; and a first edge being

defined at a juncture of the first planar surface and the continuous sidewall at the left side of the first airbed;

a first connector positioned and configured to connect the first and second airbeds, the first connector being arranged to maintain the top edge and the first edge in gap-free proximity when the first airbed and the second airbed are arranged side by side so that the left sides of the two airbeds extend adjacent to one another, and the first connector being arranged and configured to permit the first and second airbeds to stack one on top of the other, with the first connector connected to the first and second airbeds, and with the left sides of the first and second airbeds substantially aligned; and

a second, releasable, connector positioned and configured to releasably connect the first and second airbeds along the right sides of the two airbeds;

wherein the first and second airbeds are substantially the same height.

Claim 24: The airbed combination of claim 23, further comprising a sleeve for encasing the two airbeds when the airbeds are deflated.

Claim 40: An airbed combination, comprising:

a first airbed;

a second airbed, the first and second airbeds each having first and second sides, the first and second sides being on opposite sides of the airbed;

a first connector positioned and configured to connect the first and second airbeds along the first sides of the two airbeds; and

a sleeve connected to at least one of the first and second airbeds and for encasing the two airbeds when the airbeds are deflated.

2. OBVIOUSNESS I

Claims 23 and 28-39 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Griggs[1] and Pederson.[2] Claims 28-39 have not been argued separately and therefore stand or fall with claim 23. 37 C.F.R. § 41.37(c)(1)(vii).

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[1] Griggs, US 2,706,821, Apr. 26, 1955.
[2] Pederson, US 6,009,579, Jan. 4, 2000.

The Examiner relies on Griggs as disclosing:

> a first airbed (12) …; a second airbed (14), …; a first connector (24) positioned and configured to connect the first and second airbeds . . . , the first connector being arranged to maintain the top edge and the first edge in gap-free proximity when the first airbed and the second airbed are arranged side by side so that the left sides of the two airbeds extend adjacent to one another.

(Answer 3-4.)

The Examiner finds that "Griggs does not disclose a second, releasable, connector positioned and configured to releasably connect the first and second airbeds along the right sides of the two airbeds" (*id.* at 4). The Examiner relies on Pederson as disclosing "first and second releasable connectors positioned on opposing sides of a bed for the purpose of connecting two sleeping surfaces" (*id.* at 4).

The Examiner concludes that "it would have been obvious to one of ordinary skill in the art … to include releasable connectors on both sides for the purpose of connecting two sleeping surfaces" (*id.*).

We conclude that the Examiner has set forth a prima facie case that claim 23 would have been obvious to the ordinary artisan.

Griggs discloses:

> A bed mattress comprising a pair of mattress sections having longitudinal opposed sides provided with a pair of opposed longitudinal upper edge beadings, and slide fastener means securing said sides together with the beading on each section engaging the beading on the other section comprising a pair of opposite interlocking fastener sections extending along said sides, and a slide member on said fastener sections for interlocking the same, said fastener sections being secured to said sides at the juncture of said beadings and said sides and directly beneath said beadings to be

> hidden thereby and extending into said beadings to support said beadings.

(Griggs at col. 2, ll. 58-69.)

Pederson discloses a combination that "includes a featherbed and a relatively thin, down-filled top member which has a peripheral outline substantially identical to that of the featherbed," such that the "top member is positioned on the upper surface of the featherbed" (Pederson, abstract). Pederson also discloses that the bed and "topper can be readily separated, permitting the topper to be removed easily" for washing (*id.* at col. 2, l. 64 through col. 3, l. 2) and that it "adds additional cushioning and comfort to a conventional featherbed" (*id.* at col. 3, ll. 33). Pederson also discloses that "[a]ttachment elements such as straps, ties and/or buttons or even a cover member are used to removably secure the top member in place on the upper surface of the featherbed" (*id.*, abstract).

We agree with the Examiner that it would have been prima facie obvious to one of skill in the art to combine the teachings of Griggs and Pederson and thereby arrive at the invention of claim 23. As set forth above, Griggs discloses two mattresses that are aligned side by side and connected by a zipper along the top edges of the aligned mattress sides.[3] Pederson discloses that a mattress can be topped with a washable topper and that the mattress and topper can be connected via ties; i.e., a string on the mattress and a string on the topper that can be tied together.

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[3] Appellants do not dispute that Griggs' disclosure of mattresses would have suggested airbed mattresses, as recited in the instant claims, to a person of ordinary skill in the art.

The combination of Griggs and Pederson would have suggested to one of ordinary skill in the art that the double mattress of Griggs could be topped with a topper, connected via ties. Motivation to combine the references is provided by Pederson, who teaches that a topper adds additional cushioning and comfort to a mattress. The mattress suggested by the cited references thus would have a string (or other structure that could be tied) on each side of the mattresses except the zippered sides. Such strings would be structurally capable of tying Griggs' two mattresses together, in addition to tying to a topper, and therefore are "positioned and configured to releasably connect the first and second" mattresses, as recited in claim 23. Thus, the references would have suggested all the limitations of the instantly claimed mattress combination.

Appellant argues that "the claimed invention cannot be a predictable use of prior art elements because the references do not alone, or in combination disclose the features of claim 23" (Appeal Br. 9). Appellant argues that Griggs' connector is "not arranged so that the airbeds may be flipped one on top of the other without damaging either the airbeds or the connectors or both" because "the beads 16, 18 make it physically impossible to arrange the airbeds in the manner contemplated by the present invention" (*id.* at 10, citing Fig. 3 of Griggs). Thus, Appellant argues that "it is not possible for the airbeds in *Griggs* to be arranged in the manner described in claim 23, and thus the connector in *Griggs* cannot perform the structural requirements set forth in claim 23" and that the "reference teaches away from modifying the airbeds of *Griggs* to achieve the present invention

because modification for this purpose would … oppose the object of the *Griggs invention*" (*id.*).

We are not persuaded by this argument.

> After a *prima facie* case of obviousness has been established, the burden of going forward shifts to the applicant. Rebuttal is merely a "showing of facts supporting the opposite conclusion," and may relate to any of the *Graham* factors including the so-called secondary considerations. If rebuttal evidence of adequate weight is produced, the holding of *prima facie* obviousness, being but a legal inference from previously uncontradicted evidence, is dissipated.

In re Piasecki, 745 F.2d 1468, 1472 (Fed. Cir. 1984)(citations omitted.)

As recognized by the Examiner (Answer 11), Griggs suggests that the beads are somewhat flexible in that they can be displaced to an extent to allow the slide fastener means to be operated and thus appear to be flexible enough to meet the requirement of claim 23 of "the first connector being arranged and configured to permit the first and second airbeds to stack one on top of the other." Appellant has presented no evidence to rebut the Examiner's reasoned finding, and attorney argument does not take the place of evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974).

Appellant also argues that "the pillow top in *Pederson* does not make obvious the stacked arrangement of two airbeds of substantially the same height" (Appeal Br. 10).

We do not find this argument to be persuasive. Griggs discloses that mattresses of the same height are connected (Griggs, Fig. 1), but does not disclose that the two mattresses are stacked. However, this argument is not persuasive because claim 23 does not require that two mattresses of the same

height are stacked, but only requires that the mattresses are connected by a "first connector being arranged and configured to permit the first and second airbeds to stack one on top of the other." As discussed above, this limitation is disclosed by Griggs.

3. OBVIOUSNESS II

Claims 24-27 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Griggs, Pederson, and Smith.[4] Claims 25-27 have not been argued separately and therefore stand or fall with claim 24. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner relies on Griggs and Pederson as discussed above. The Examiner finds that these references do not "disclose a sleeve for encasing the airbeds" (Answer 7). The Examiner relies on Smith as disclosing "a sleeve (28) for encasing two beds (sleeping bag and airbed)" (*id.*). The Examiner finds that it would have been obvious to attach a sleeve to the airbed suggested by the combination of Griggs and Pederson and that the "motivation would have been to not damage the beds in a rolled up configuration" (*id.*).

We conclude that the Examiner has set forth a prima facie case that claim 24 would have been obvious to the ordinary artisan. Griggs and Pederson are discussed above. Smith discloses an "inflatable mattress … that has a method of retaining a sleeping bag on top of it. Retaining a sleeping bag on top is achieved by using a coverlet … connected to the top of the inflatable mattress by suitable fasteners" (Smith, abstract). Smith also discloses that an "integral protective flap is also provided. The flap encases

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[4] Smith et al., US 2002/0133879 A1, Sept. 26, 2002.

the mattress when in a rolled-up configuration and protects it during storage and transport" (*id.*).

We agree with the Examiner that it would have been prima facie obvious to one of skill in the art to combine the teachings of Griggs, Pederson and Smith and thereby arrive at the invention of claim 24. Based on Smith's teaching, one ordinary skill in the art would have been prompted to employ a protective sleeve or flap to protect the mattresses when not in use.

Appellant argues that invention of claim 24 is not obvious for the same reasons argued for claim 23, as discussed above (Appeal Br. 11-12).

We do not find this argument to be persuasive for the reasons set forth above.

4. OBVIOUSNESS III

Claims 40-43 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Griggs and Smith. [5] Claims 41-43 have not been argued separately and therefore stand or fall with claim 40. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner relies on Smith as disclosing "two beds (airbed with attached sleeping bag) with a sleeve for encasing the two beds when deflated" (Answer 8). The Examiner finds that "Smith does not disclose a second airbed," and the Examiner relies on Griggs, as disclosing "a dual airbed combination with a connector for connecting the beds along their sides" (*id.*). The Examiner concludes that "it would have been obvious to

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[5] We note that the "Status of the Claims" section of the Appeal Brief does not state a grounds for rejection of claim 43, but that the Examiner's Answer at page 9 indicates that claim 43 is rejected under the combination of Griggs and Smith.

one of ordinary skill in the art at the time of the invention to add another airbed, with a way to connect them side-by-side" in order "'to provide an improved mattress which is formed in two sections whereby one section may be quickly replaced upon damage thereto and thereby saving the owner of a damaged mattress the cost of replacing the entire mattress.'" (*Id.* at 8-9, citing Griggs at col. 1, ll. 33-37.)

We conclude that the Examiner has set forth a prima facie case that claim 40 would have been obvious to the ordinary artisan. Griggs and Smith are discussed above.

We agree with the Examiner that it would have been prima facie obvious to one of skill in the art to combine the teachings of Griggs and Smith and thereby arrive at the invention of claim 40. One of skill in the art would have employed a protective sleeve or flap to protect the connected airbed mattresses suggested by Griggs, when the mattresses are not in use, as disclosed by Smith.

Appellant argues that claim 40 requires "a sleeve ... for encasing the two airbeds when the airbeds are deflated" and that "combining the references would result in two airbeds connected side-by-side with each airbed having a sleeve" (Appeal Br. 12).

We do not find this argument to be persuasive. Smith suggests a sleeve to protect an airbed. Given this suggestion, one of skill in the art would have understood two connectable airbeds, as taught by Griggs, could be protected equally well by two individual sleeves or a single sleeve large enough to contain both airbeds. The use of a single sleeve to protect two mattresses appears to be no more than the predictable use of a prior art

element for its known function. *See KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007)("[W]hen the question is whether a patent claiming the combination of elements of prior art is obvious," the relevant question is "whether the improvement is more than the predictable use of prior art elements according to their established functions."). *See also id.* at 1741 (The obviousness analysis "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.") and 1742 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

SUMMARY

The Examiner's rejections are supported by the preponderance of the evidence of record. We therefore affirm the rejection of claims 23-43 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cdc

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